

BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: APRIL 21, 2004 Division: TDC

Bulk Item: Yes X No Department:

AGENDA ITEM WORDING:

Approval of an Amendment to Agreement with Key West Film Society to extend Agreement until September 30, 2004.

ITEM BACKGROUND:

PREVIOUS REVELANT BOCC ACTION:

BOCC approved original Agreement at their meeting of February 19, 2003.

CONTRACT/AGREEMENT CHANGES:

Amendment to extend

STAFF RECOMMENDATIONS:

Approval

TOTAL COST: \$191,845

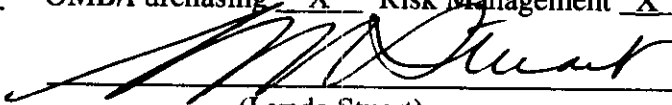
BUDGETED: Yes X No

COST TO COUNTY: \$191,845 **SOURCE OF FUNDS:** TDC

REVENUE PRODUCING: Yes X No **AMOUNT PER MONTH** **Year**

APPROVED BY: County Atty X OMB/Purchasing X Risk Management X

DIVISION DIRECTOR APPROVAL:


(Lynda Stuart)

DOCUMENTATION: Included X To Follow Not Required

DISPOSITION:

AGENDA ITEM # D2

CONTRACT SUMMARY			
Contract with:	<u>Key West Film Society, Inc.</u>	Contract #	<u> </u>
		Effective Date:	<u>4/21/04</u>
		Expiration Date:	<u>9/30/04</u>
Contract Purpose/Description:			
<u>Approval of an Amendment to Agreement with Key West Film Society, Inc. to extend Agreement until September 30, 2004.</u>			
Contract Manager:	<u>Maxine Pacini</u>	<u>3523</u>	<u>TDC # 3</u>
	(Name)	(Ext.)	(Department/Stop #)
for BOCC meeting on		<u>4/21/04</u>	Agenda Deadline: <u>4/6/04</u>

CONTRACT COSTS	
Total Dollar Value of Contract: \$	<u>191,845</u> Current Year Portion: \$ <u> </u>
Budgeted? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Account Codes: <u>117-77040-530340-T37M-462-Y-530340</u>
Grant: \$ <u> </u>	
County Match: \$ <u> </u>	<u> </u>

CONTRACT REVIEW				
	Date In	Changes Needed	Reviewer	Date Out
Division Director	3/8/04	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	M. R. P. [Signature]	3/2/04
Risk Management	3/5/04	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	B. L. [Signature]	3/5/04
O.M.B./Purchasing	3/2/04	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	[Signature]	3/4/04
County Attorney	3/2/04	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	S. Hutton	3/2/04
Comments:				

AMENDMENT TO AGREEMENT

THIS ADDENDUM to agreement is made and entered into this ____ day of _____ 2004, between the County of Monroe and Key West Film Society, Inc.

WHEREAS, there was a contract entered into on February 19, 2003, between the parties, awarding \$191,845 to the Key West Film Society, Inc. for the auditorium project; and

WHEREAS, it has become necessary to extend the contract for an additional period to allow time for Key West Film Society, Inc. to complete the project;

NOW, THEREFORE, in consideration of the mutual covenants contained herein the parties agree to the amended agreement as follows:

1. Contract period as outlined in Paragraph 1 be extended to September 30, 2004.
2. This project shall be completed and invoices submitted to the County Finance Department no later than September 30, 2004. The Grant-in-Aid funds must be expended by September 30, 2004. No funds will be available for use for this project agreement after September 30, 2004.
3. The remaining provisions of the contract dated February 19, 2003 remain in full force and effect.

IN WITNESS WHEREOF, the parties have set their hands and seal on the day and year first above written.

Key West Film Society, Inc.

President

(SEAL)

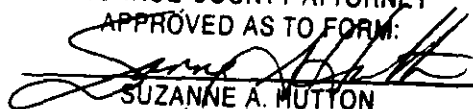
ATTEST: DANNY L. KOLHAGE, CLERK

BOARD OF COUNTY
COMMISSIONERS OF
MONROE COUNTY, FLORIDA

Deputy Clerk

Mayor/Chairman

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:


SUZANNE A. MUTTON
ASSISTANT COUNTY ATTORNEY
Date 3/02/04



Key West Film Society

February 23, 2004

District Advisory Council #1
Tourist Development Council of Monroe County
1201 White St.
Key West FL 33040
via Fax 296-0788

Dear DAC #1:

The Key West Film Society, Inc. respectfully requests an extension of time for completion of its contract dated Feb. 19, 2003. We are requesting that the completion date of the contract be extended to the end of this fiscal year, Sept. 30, 2004.

Background - On Feb. 19, 2003, the Monroe County BOCC approved a grant of \$191,845 to the Key West Film Society "to renovate and equip an 8,000 sq. ft. vacant space for use as a multi-purpose cultural auditorium." A number of items were specifically included in the list of eligible expenditures, including such things as lighting, finishes, signage, concession systems, storage shelving, and projection, screen and sound systems, all of which are finish items that cannot be installed until the conclusion of the project. The period of that contract now runs out on March 15, 2004.

Reason For Request - We had expected to begin construction of the new space in the spring of 2003, and begin drawing on TDC funds in August and September, 2003. However, technical issues in granting our building permit (relating to the location of fire exits) delayed the project for several months, meaning that the finish work covered under the TDC contract could not be undertaken until recently. The project is now nearing completion, and we have begun to submit payment requests to the TDC. The theater is scheduled for opening in a partially completed state next month. However, it is clear that it will not be fully completed until after March 15.

We therefore request an extension of our contract until conclusion of the fiscal year (Sept. 30, 2004).

Please note that we are **not** requesting any change in the terms and conditions of our grant or in the nature of the project being funded. We are **not** requesting any additional funding, and we are **not** changing the fiscal year of our contract. We are merely requesting an extension of a few months to enable us to complete the project and the paperwork needed for our submissions.

Thank you for your consideration regarding this request. We would be pleased to answer any questions or supply any additional information you may desire. Please contact George Cooper directly at 305-849-2210 or george@tashmoo.com.

Yours truly,

George Cooper
Chairperson

PO Box 1283 • Key West, FL 33041
Tel: 305-294-5857 • Fax: 305-768-0465 • info@keywestfilm.org
www.keywestfilm.org

GRANT OF FUNDS

This AGREEMENT dated the 19th day of FEB 2003, is entered into by and between the BOARD OF COUNTY COMMISSIONERS FOR MONROE COUNTY, hereinafter "County," on behalf of the TOURIST DEVELOPMENT COUNCIL, hereinafter "TDC," and Key West Film Society, Inc., a Florida not-for-profit corporation, hereinafter "Contractor".

WHEREAS, the third penny of Tourist Development Tax may be used to acquire, construct, extend, enlarge, remodel, repair or improve, convention centers, sports stadiums, sports arenas, coliseums, auditoriums, fishing piers, museums, zoological parks, nature centers and beaches which are publicly owned and operated or owned and operated by not-for-profit corporations, and

WHEREAS, Contractor has applied for funding for the Key West Film Society Theater project to remodel, repair and improve the theater property hereinafter "the Property"; and

WHEREAS, the County and TDC have determined that it is in the best interest of the County, for purposes of promoting tourism and preserving the heritage of the community, to remodel, repair and improve the property for use as an auditorium open to the public;

NOW, THEREFORE, in consideration of the mutual covenants and payments contained herein, the Contractor and the County have entered into this agreement on the terms and conditions as set forth below.

1. AGREEMENT PERIOD. This agreement is for the period February 19, 2003 through March 15, 2004. This agreement shall remain in effect for the stated period unless one party gives to the other written notification of termination pursuant to and in compliance with paragraphs 7, 12 and 13 below.

2. SCOPE OF AGREEMENT. The Contractor shall provide such materials, services and equipment as is necessary to renovate and equip an 8,000 sq. ft. vacant space for use as a multi-purpose cultural auditorium with two theater spaces. Included within the renovation will be lighting; finishes (tile, carpet, wall covering, painting, ceiling); signage; art work; ticket booth; counters; concession systems; storage shelving; projection screen and sound systems; theatre lighting; seating; window treatments; legal architectural and consulting services related to all above items.

The recipient of TDC capital project funding shall designate a project manager if no licensed architect, engineer or general contractor is involved in the project. If the project is performed by County or City personnel, the project manager shall be the Engineer, Building Official or Construction Manager of that local government.

3. AMOUNT OF AGREEMENT AND PAYMENT. The County shall provide an amount not to exceed \$191,845 in reimbursement for materials and services used to acquire, improve, rehabilitate, repair and renovate the property. The Board of County Commissioners and the Tourist Development Council assume no liability to fund this agreement for an amount in excess of this award. Monroe County's performance and obligation to pay under this agreement is contingent upon an annual appropriation by the BOCC.

a). Payment for expenditures permissible by law and County policies shall be made through reimbursement to Contractor upon presentation of invoices, canceled checks and other documentation necessary to support a claim for reimbursement. Included in said documentation shall be proof that the Contractor has received and applied to the property matching fund equivalent to or greater than the amount invoiced to the County. Submission of invoices must be certified through a statement signed by an officer of the organization and notarized, declaring the representations in the invoice are true and factual.

b) Application of matching funds requires actual payment of the matching funds, or, in the alternative, a commitment of said funds and that the portion of the project for which the matching funds are to be used has been sufficiently completed to require payment of said matching funds. Mere obligation through execution of a contract or approval of a budget item to be paid from matching funds will not suffice.

c) Documentation shall be submitted to the TDC Administrative Office to show the receipt and application of in-kind donations of goods, professional services, and materials. Said documentation should include invoices, bills of lading, etc., and be verified as received and applied to the project through a notarized statement of the project architect, engineer, general contractor or project manager. The receipt and application to the project of volunteer labor are to be documented and verified by notarized signature of the project architect, engineer, general contractor or project manager, and said documentation submitted to the TDC Administrative Office. All submissions should have a proposed schedule of values for phases and indicate the percentage of completion of the overall project as of the submission. This document should be signed by the project architect, engineer, general contractor or project manager.

4. **REPORTS.** The Contractor shall provide financial reports in summary of activity on forms provided or approved by the TDC, and quarterly narrative reports of activity under the approved work plan. The Contractor shall keep such records as are necessary to document the performance of the agreement and expenses as incurred, and give access to these records at the request of the TDC, the County, the State of Florida or authorized agents and representatives of said government bodies. It is the responsibility of the Contractor to maintain appropriate records to insure a proper accounting of all funds and expenditures. The Contractor understands that it shall be responsible for repayment of any and all audit exceptions which are identified by the Auditor General for the State of Florida, the Clerk of Court for Monroe County, the Board of County Commissioners for Monroe County, or their agents and representatives. In the event of an audit exception, the current fiscal year grant award or subsequent grant awards will be offset by the amount of the audit exception. In the event the grant is not renewed or supplemented in future years, the Contractor will be billed by the County for the amount of the audit exception and shall promptly repay any audit exception.

5. **MODIFICATIONS AND AMENDMENTS.** Any and all modifications of the terms of this agreement shall be only amended in writing and approved by the Board of County Commissioners for Monroe County.

6. **INDEPENDENT CONTRACTOR.** At all times and for all purposes hereunder, the Contractor is an independent contractor and not an employee of the Board of County Commissioners of Monroe County. No statement contained in this agreement shall be construed as to find the Contractor or any of its employees, contractors, servants or agents to be the employees of the Board of County Commissioners of Monroe County, and they shall be entitled to none of the rights, privileges or benefits of employees of Monroe County.

7. **COMPLIANCE WITH LAW.** In carrying out its obligations under this agreement, the Contractor shall abide by all statutes, ordinances, rules and regulations pertaining to or regulating the provisions of this agreement, including those now in effect and hereafter adopted. A violation of said statutes, ordinances, rules or regulations shall constitute a material breach of this agreement and shall entitle the County to terminate this agreement immediately upon delivery of written notice of termination to the Contractor.

8. **RESTRICTIONS ON AGREEMENTS ENTERED PURSUANT TO THIS AGREEMENT.** The Contractor shall include in all agreements funded under this agreement the following terms:

a) **Anti-discrimination.** Contractor agrees that they will not discriminate against any employees or applicants for employment or against persons for any other benefit or service under this agreement because of their race, color, religion, sex, national origin, or physical or mental handicap where the handicap does not affect the ability of an individual to perform in a position of employment, and to abide by all federal and state laws regarding non-discrimination.

b) **Anti-kickback.** Contractor warrants that no person has been employed or retained to solicit or secure this agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, and that no employee or officer of the Contractor has any interest, financially or otherwise, in Contractor. For breach or violation of this warranty, the Contractor shall have the right to annul this agreement without liability or, in its discretion, to deduct from the agreement price or consideration, the full amount of such commission, percentage, brokerage or contingent fee. Contractor acknowledges that it is aware that funding for this agreement is available at least in part through the County and that violation of this paragraph may result in the County withdrawing funding for the Project.

c) **Hold harmless/indemnification.** Contractor acknowledges that this agreement is funded at least in part by the County and agrees to indemnify and hold harmless the County and any of its officers and employees from and against any and all claims, liabilities, litigation, causes of action, damages, costs, expenses (including but not limited to fees and expenses arising from any factual investigation, discovery or preparation for litigation), and the payment of any and all of the foregoing or any demands, settlements or judgments (collectively claims) arising directly or indirectly from any negligence or criminal conduct on the part of Contractor in the performance of the terms of this agreement. The Contractor shall immediately give notice to the County of any suit, claim or action made against the Contractor that is related to the activity under this agreement, and will cooperate with the County in the investigation arising as a result of any suit, action or claim related to this agreement.

d) **Insurance.** Contractor agrees that it maintains in force at its own expense a liability insurance policy which will insure and indemnify the Contractor and the County from any suits, claims or actions brought by any person or persons and from all costs and expenses of litigation brought against the Contractor for such injuries to persons or damage to property occurring during the agreement or thereafter that results from performance by Contractor of the obligations set forth in this agreement. At all times during the term of this agreement and for one year after acceptance of the project, Contractor shall maintain on file with the County a certificate of the insurance of the carriers showing that the aforesaid insurance policy is in effect. The following coverage's shall be provided:

1. Workers Compensation insurance as required by Florida Statutes.
2. Employer's Liability insurance with minimum limits of (aggregate): \$500,000 bodily injury by accident, \$500,000 bodily injury by disease aggregate, \$500,000 bodily injury by disease per person.
3. Commercial General Liability Insurance with minimum limits of \$500,000 per occurrence for bodily injury, personal injury and property damage.

4. Comprehensive Auto Liability Insurance with minimum limits of \$300,000 combine single limit per occurrence.

The Contractor, the County and the TDC shall be named as additional insured, exempt worker compensation. The policies shall provide no less than 30 days notice of cancellation, non-renewal or reduction of coverage.

At all times during the term of this agreement and for one year after acceptance of the project Contractor shall maintain on file with the County a certificate of insurance showing that the aforesaid insurance coverage's are in effect.

e) Licensing and Permits. Contractor warrants that it shall have, prior to commencement of work under this agreement and at all times during said work, all required licenses and permits whether federal, state, County or City.

9. HOLD HARMLESS/INDEMNIFICATION. The Contractor hereby agrees to indemnify and hold harmless the BOCC/TDC and any of its officers and employees from and against any and all claims, liabilities, litigation, causes of action, damages, costs, expenses (including but not limited to fees and expenses arising from any factual investigation, discovery or preparation for litigation), and the payment of any and all of the foregoing or any demands, settlements or judgments arising directly or indirectly under this agreement. The Contractor shall immediately give notice to the County of any suit, claim or action made against the County that is related to the activity under this agreement, and will cooperate with the County in the investigation arising as a result of any suit, action or claim related to this agreement.

10. ANTI-DISCRIMINATION. The Contractor agrees that they will not discriminate against any of their employees or applicants for employment or against persons for any benefit or service because of their race, color, religion, sex, national origin, or physical or mental handicap where the handicap does not affect the ability of an individual to perform in a position of employment, and to abide by all federal and state laws regarding non-discrimination.

11. ANTI-KICKBACK. The Contractor warrants that no person has been employed or retained to solicit or secure this agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, and that no employee or officer of the County or TDC has any interest, financially or otherwise, in the said funded project, except for general membership. For breach or violation of this warranty, the County shall have the right to annul this agreement without liability or, in its discretion, to deduct from the agreement price or consideration, the full amount of such commission, percentage, brokerage or contingent fee.

12. TERMINATION. This agreement shall terminate on March 15, 2004. Termination prior thereto shall occur whenever funds cannot be obtained or cannot be continued at a level sufficient to allow for the continuation of this agreement pursuant to the terms herein. In the event that funds cannot be continued at a level sufficient to allow the continuation of this agreement pursuant to the terms specified herein, this agreement may then be terminated immediately by written notice of termination delivered in person or by mail to Contractor. The County may terminate this agreement without cause upon giving written notice of termination to provider. The County shall not be obligated to pay for any services or goods provided by Contractor after Contractor has received written notice of termination.

13. TERMINATION FOR BREACH. The County may immediately terminate this agreement for any breach of the terms contained herein. Such termination shall take place immediately upon receipt of written notice of said termination. Any waiver of any breach of covenants herein

contained to be kept and performed by Contractor shall not be deemed or considered as continuing waiver and shall not operate to bar or prevent the County from declaring a forfeiture for any succeeding breach either of the same conditions or of any other conditions. Failure to provide County with certification of use of matching funds or matching in-kind services at or above the rate of request for reimbursement or payment by is a breach of agreement, for which the County may terminate this agreement upon giving written notification of termination.

14. **ENTIRE AGREEMENT.** This agreement constitutes the entire agreement of the parties hereto with respect to the subject matter hereof and supersedes any and all prior agreements with respect to such subject matter between the Contractor and the County.

15. **CONSENT TO JURISDICTION.** This agreement, its performance, and all disputes arising hereunder, shall be governed by the laws of the State of Florida, and both parties agree that the proper venue for any actions shall be in Monroe County.

16. **ETHICS CLAUSE:** Contractor warrants that he has not employed, retained or otherwise had act on his behalf any former County officer or employee in violation of Section 2 or Ordinance No. 10-1990 or any County officer or employee in violation of Section 3 of Ordinance No. 10-1990. For breach or violation of the provision the County may, at its discretion terminate this agreement without liability and may also, at its discretion, deduct from the agreement or purchase price, or otherwise recover, the full amount of any fee, commission, percentage, gift, or consideration paid to the former or present County officer or employee.

17. **PUBLIC ENTITY CRIME STATEMENT:** A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a bid on an agreement to provide any goods or services to a public entity, may not submit a bid on an agreement with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to public entity, may not be awarded or perform work as a Contractor, supplier, sub-contractor, or consultant under a agreement with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

18. **AUTHORITY:** Contractor warrants that it is authorized by law to engage in the performance of the activities encompassed by the project herein described. Each of the signatories for the Contractor below certifies and warrants that the Contractor's name in this agreement is the full name as designated in its corporate charter (if a corporation); they are empowered to act and contract for the Contractor, and this agreement has been approved by the Board of Directors of Contractor or other appropriate authority.

19. **LICENSING AND PERMITS:** Contractor warrants that it shall have, prior to commencement of work under this agreement and at all times during said work, all required licenses and permits whether federal, state, County or City.

20. **INSURANCE:** Contractor agrees that it maintains in force at its own expense a liability insurance policy which will insure and indemnify the Contractor and the County from any suits, claims or actions brought by any person or persons and from all costs and expenses of litigation brought against the Contractor for such injuries to persons or damage to property occurring during the agreement or thereafter that results from performance by Contractor of the obligations set

forth in this agreement. At all times during the term of this agreement and for one year after acceptance of the project, Contractor shall maintain on file with the County a certificate of the insurance of the carriers showing that the aforesaid insurance policy is in effect. The following coverage's shall be provided:

1. Workers Compensation insurance as required by Florida Statutes.
2. Employer's Liability insurance with minimum limits of (aggregate): \$500,000 bodily injury by accident, \$500,000 bodily injury by disease aggregate, \$500,000 bodily injury by disease per person.
3. Commercial General Liability Insurance with minimum limits of \$500,000 per occurrence for bodily injury, personal injury and property damage.
4. Comprehensive Auto Liability Insurance with minimum limits of \$300,000 combined single limit per occurrence.

The Contractor, the County and the TDC shall be named as additional insured, except workers compensation. The policies shall provide no less than 30 days notice of cancellation, non-renewal or reduction of coverage.

At all times during the term of this agreement and for one year after acceptance of the project, Contractor shall maintain on file with the County a certificate of insurance showing that the aforesaid insurance coverage's are in effect.

21. NOTICE. Any written notice to be given to either party under this agreement or related hereto shall be addressed and delivered as follows:

For Key West Film Society, Inc.: George Cooper
C/O Key West Film Society
Box 1283, Key West, FL 33041

For County: Lynda Stuart
Monroe County Tourist Development Council
1201 White Street, Suite 102
Key West, FL 33040
and
Suzanne Hutton, Asst. County Attorney
P.O. Box 1026
Key West, FL 33041-1026

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed the day and year first above written.

(SEAL)
ATTEST: DANNY L. KOLHAGE, CLERK

By: Isabel C. De Santis
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By: Alvin M. Jackson
Mayor/Chairman

(SEAL)
ATTEST:

By: _____
Secretary

Key West Film Society, Inc.

By: M. Guelles
President

Key West Film Society
FY 2003 Capital Project Resources

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY
BY: Suzanne A. Hutton
SUZANNE A. HUTTON